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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,659	09/15/2003	John Buiatti		1866
26387	7590	02/09/2006	EXAMINER	
ROTH & GOLDMAN, P.A. 523 W. 6TH STREET SUITE 707 LOS ANGELES, CA 90014			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/662,659	BUIATTI, JOHN
	<b>Examiner</b>	<b>Art Unit</b>
	Melanie J. Hand	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 17 November 2005.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-26 is/are pending in the application.  
4a) Of the above claim(s) 6, 15 and 23 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,7-11,16-22 and 24-26 is/are rejected.

7)  Claim(s) 3-5,12-14 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 15 September 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: .

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of species (1), claims 1-5, 7-14, 16-22 and 24-26 in the reply filed on November 17, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 6, 15 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on November 17, 2005.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: the term "the insert" lacks proper antecedent basis. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (U.S. Patent No. 5,415,620)

With respect to **Claims 1,19,20**: Chen teaches a breast augmentation apparatus 100 comprising a rigid hollow funnel-shaped body 1 for enclosing a breast C having a cylindrical region for receiving a nipple B, and a elongated cylindrical nipple protector 4. Body 1 has a generally closed end in the nipple-receiving portion wherein air evacuation duct 11 is formed. Chen does not teach that this is a milk delivery aperture, however Examiner asserts that the aperture is suitable and capable of functioning as such. Since nipple protector 4 is hollow, it defines a channel which is a pathway for suction flow as taught by Chen but again can function as a milk delivery pathway since said protector encases the nipple B by air-tight sealing means 42. As can best be seen in Fig. 1, the axial length of protector 4 is less than that of the portion of body 1 adapted to receive nipple B. ('620, Col. 2, lines 16-42, 61-63)

With respect to **Claim 2**: As can best be seen in Fig. 1, Chen teaches that protector 4 is slidably received in the nipple-receiving portion of body 1.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('620) in view of Ryan (U.S. Patent No. 6,358,226).

With respect to **Claim 7**: Chen does not teach that body 1 is formed from flexible elastomeric material. Ryan teaches a lactation apparatus that is comprised of a cup 13 with a middle portion 17 that is comprised of rubber and an outer portion that is comprised of relatively stiff (but still bendable) plastic. ('226, Col. 3, lines 7-10, 23-25) Ryan teaches that this device is equipped to accept a suction conduit and suction flow ('226, Col. 4, lines 1,2), and rubber is well known in the art for providing a softer, more flexible fit, therefore it would be obvious to one of ordinary skill in the art to modify the hollow body of the apparatus taught by Chen to instead be comprised of a combination of malleable plastic and rubber as taught by Ryan.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen ('620) in view Ryan ('226), as applied to claim 7 above, and further in view of Han (U.S. Patent No. 6,213,840).

With respect to **Claims 8,9**: Neither Chen nor Ryan teaches slits that define a closed end of a nipple receiving portion. Han teaches a hands-free breast pump supporting bra

and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which encompasses crossed slits. ('840, Col. 2, lines 43-50) Since both Chen and Ryan teach suction sources that engage a nipple area, it would be obvious to one of ordinary skill in the art to substitute the suction ducts taught by both Chen and Ryan with crossed slits to provide a normally closed milk delivery aperture as taught by Han.

Claims 10, 11 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsson et al (U.S. Patent Application Publication No. 2002/0062103) in view of Chen ('620).

With respect to **Claim 10,22**: Larsson teaches a breastpump having a universal hood base 7 and interchangeable suction hoods 1. Hoods 1 have cones 3 and/or cylindrical parts 5 of varying nipple tunnel lengths. The distal end of cone 3 (or cylindrical part 5) is adapted to engage with a funnel 8 of a breastpump and has an open end wherein milk expressed from the breast is channeled to a milk delivery receptacle. Larsson teaches that extenders may be used in conjunction with the various cylindrical parts 5, and therefore those extenders would be of various lengths as well. Tubular shaped extension 17 functions as a channel for milk expressed from the breast to be delivered to the milk receptacle. ('103, ¶¶ 0001, 0021,0027) Larsson does not teach that the axial lengths of the nipple extenders are less than that of cylindrical part 5.

Chen teaches a breast augmentation apparatus having a nipple protector 4 with an axial length that is less than that of the nipple-receiving portion of body 1. Since Larsson teaches that extenders can be used with cylindrical parts 5, and that parts 5 are of varying nipple tunnel lengths, and Chen teaches a particular length correlation suitable for an analogous apparatus, it would be obvious to one of ordinary skill in the art to use an extender having an axial length less than that of a cylindrical part 5 taught by Larsson as taught by Chen with a reasonable expectation of success.

With respect to **Claim 11,24**: Larsson teaches that cones 3 are comprised of elastomeric material. ('103, ¶ 0027)

With respect to **Claims 16,17,25,26**: Larsson does not teach a slit means at the distal end of tubular extension 17. Han teaches a hands-free breast pump supporting bra and system that comprises a bra having slits located in the region of each nipple to accommodate a funnel from a suction source. ('840, Col. 2, lines 37-39) Han teaches that these slits may be horizontal and/or vertical or any shape that accommodates said funnel, which encompasses crossed slits. ('840, Col. 2, lines 43-50) Since both Chen and Ryan teach suction sources that engage a nipple area, it would be obvious to one of ordinary skill in the art to substitute the suction ducts taught by both Chen and Ryan with crossed slits to provide a normally closed milk delivery aperture as taught by Han.

With respect to **Claim 18**: Since Larsson teaches extenders as a separate entity for use with cylindrical parts 5, ('103, ¶ 0001), said extenders would necessarily be slidably received within said parts.

With respect to **Claim 21**: Please see the rejection of claim 10 in addition to the following: Larsson teaches that hoods 1 with cylindrical parts 5 are designed such that extenders are not needed but can be used in conjunction, therefore Larsson teaches integrally formed inserts, but does not teach that said inserts have an axial length less than that of cylindrical parts 5. Please refer back to the rejection of Claim 10 for the motivation to combine the prior art of Larsson with the prior art of Chen.

#### ***Allowable Subject Matter***

Claims 3-5 and 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: A thorough search of the prior art of record did not disclose any reference taken alone or in combination with other references, that anticipate or render obvious claims 3-5 and 12-14. The closest prior art of record that would be taken in combination with the prior art of Chen with respect to Claims 3-5 is U.S. Patent Application Publication No. 2003/0149398 to Renz et al which teaches a breast cup having a flexible cylindrical nipple receiving portion, insert 600. Insert 600 has inner portion 650 having pleats or

fold 675 formed in its second side wall that define external channels therebetween, but, as can be seen in Fig. 2, these channels are interrupted on both axially opposed ends and therefore cannot function as external milk delivery pathways. Claims 12-14 are dependent upon claim 10 which is unpatentable over Larsson in view of Chen. The combined teaching of Larsson and Chen and Renz would also not anticipate or render obvious the limitations of claims 12-14 for the same reasons as discussed with respect to the combination of the teachings of Chen and Renz.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

